BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR (C.G.)

Single Bench

WRIT PETITION NO. 2114/2006

PETITIONERS

1. Gokul Ram, son of Shri Motru Ram, aged about 36 years,
2. Hriday Ram, son of Shri Jhitaku Ram, aged about 49 years,
3. Rajkumar Yadav, aged about 41 years, son of Shri Gorelal Rajput,
4. Videshi Ram, aged about 52 years, son of Shri Heera Ram.
5. Mahesh Kumar, aged about 43 years, son of Shri Asharam.

All the Petitioners are working with Chhattisgarh Rajya Matatsya Mahasangh Maryadit, Raipur (C.G.)

All are resident of village and post Salue, District Durg (Chhattisgarh)

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, through – the Secretary, Secretary Fishary D.K.S. Bhawan, Mantralay, Raipur (C.G.)

W.P. No. 2114/06
Presented by Shri Vinod Bosh Mishra
dated 20/4/06

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2. Chhattisgarh Rajya Matatsya Mahasangh Maryadit, Raipur (C.G.) through – Its Managing Director.

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

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[redacted]

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2114 of 2006

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Petitioners : Gokul Ram & others

Versus

Respondents : State of C.G & others

Post for order on 22nd May, 2006

Sd/-
Satish K.Agnihotri
Judge

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W.P. No. 2114 OF 2006

Petitioners : Gokul Ram & Others.

Versus

Respondents : State of C.G. and others.

Shri P.S. Koshy, counsel for the petitioners.
Shri Sushil Dubey, Government Advocate for the State.
Shri Rajeev Shrivastava, counsel for the caveater.

ORDER

(23 May, 2006)

1. According to the petitioners, the petitioners were appointed on daily wages basis by the Fisheries Corporation of Madhya Pradesh. The petitioners were engaged as daily wage workers by Fisheries Development Corporation in Madhya Pradesh during the period between 1987 to 1989. Admittedly, the petitioners were not appointed after proper competition among qualified persons pursuant any advertisement. The appointment of the petitioners was on daily wages basis, however, the petitioners continued in service till order dated 31.3.2000 was passed.

2. The services of the petitioners came to an end, on the ground that their services were no longer required. The petitioners were paid retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D.Act").

3. Learned counsel for the petitioners submits that, since retrenchment compensation was paid at the time of removal of the petitioners from service, the petitioners are governed by the provisions of the I.D. Act.

4. On query, whether the respondent-Corporation is an Industry, the petitioners categorically admit that the respondent No.2 employer is not an Industry. Since the respondent No.2 itself has resorted to the provisions of Section 25-F of the I.D. Act for grant of retrenchment compensation, the petitioner is governed by the provisions of the I. D. Act.

5. The petitioners further submit that the petitioners' removal order should be declared as invalid, on the ground that the petitioners have served for more than 25 years on daily wages basis. The submission of the petitioners, that the respondent No.2 be treated as Industry, on the ground that the respondent No.2 had paid retrenchment compensation before removal of services of the petitioners, deserves to be rejected, on simple ground that by referring to certain provisions for grant of compensation, the respondent No.2 does not become an Industry. The respondent No.2 is a society and has not been declared as an Industry so as to attract the provisions of Industrial Laws.

6. The Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** (2006 (4) SCALE) 197 held as under:

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"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his terms of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due

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process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs

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by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

7. In the facts and circumstances of the case, where it is admitted case of the petitioners, that the petitioners were appointed on daily wages basis not on the basis of advertisement or open competition, the petitioners have no right to continue in the employment and the impugned order of removal dated 31.3.2006 cannot be faulted with. For the reasons stated above, this petition is dismissed at admission stage summarily.

Sd/-
Satish K.Agnihotri
Judge

Gouri